

C O P Y

*in opinion*

*A 51*

September 5, 1957

*See also:  
opinion of July 29, 1957 =  
attached*

Honorable Donald G. Matson  
Chairman, N. H. Police Retirement Board  
P. O. Box 313  
Concord, New Hampshire

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OCT 01 1998

Re: John J. Sullivan

CONCORD, N.H.

Dear Judge Matson:

In a letter of August 30, 1957, you referred to our opinion in the above-entitled matter dated July 29, 1957; and you requested our views upon another facet of the law as it may apply to the case.

You note that there has been presented to the Board strong and conclusive factual evidence that death was due to his service injuries as a policeman. It further appears that Mr. Sullivan is survived by a widow who is totally dependent.

At this point you refer to RSA 103:17, and you state that the decedent prior to his death had received \$103.62 less than the total payments made by him into the Retirement Fund. Upon the request of the widow, and presumably pursuant to the statute cited, this sum was paid over to her upon his decease.

The widow has applied for survivor's benefits under the provision of RSA 103:15 which reads as follows:

" . . . In case a permanent policeman, accepting the provisions hereof, shall die as the result of injury received in line of duty, his widow, or, if none, his minor child or children shall receive an annual sum equal to one-half the assessed part of the annual salary of such deceased policeman at the time of his death, but in no case less than twelve hundred dollars per year."

September 5, 1957

The question which you pose and upon which you desire our opinion is whether the effect of RSA 103:17 and payment under it is to bar the widow's receiving benefits under RSA 103:15. In our view RSA 103:17 does not have such effect.

In the opinion of July 29 it was noted that the right of the specified survivors to benefits became fixed and positive upon a showing that the policeman's death was as a result of injuries sustained in the line of duty. The survivor need only be in the class set forth in RSA 103:15; the death the result of injuries sustained as stated. Given these qualifications - and these only - the rights of the survivor are perfected.

The language of RSA 103:17 contains no suggestion that the rights thus established are to be divested upon a refund of excess payments. The two sections are not interrelated. Section 17 simply confers an additional benefit - this, however, not upon the widow or minor children as does section 15 - but rather upon the estate of the deceased policeman. In this regard it is emphasized that the estate constitutes an entity which is completely separate from the widow or the children. To illustrate: Funds paid into the estate under RSA 103:17 would be subject to the just claims of the creditors of the deceased. Sums paid to the widow or children under RSA 103:15 would not be subject to such claims. The mere fact that the widow or minor children may be the only persons having an interest in the estate of the deceased - and thus the recipients of the refund - does not constitute a merger of their identity with that of the estate.

We conclude, therefore, that the fact that the excess of the decedent's payments into the fund over his receipts from it while living has been paid over does not operate to bar the surviving widow's receiving benefits under RSA 103:15.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

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